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EXAMINER

HOEKSTRA, JEFFREY GERBEN

ART UNIT

PAPER NUMBER

3736

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Notice of Amendment

1. In response to the amendment filed on 04/20/2009, amended claims 1 and 5 is/are acknowledged. The current rejections of the claims are *withdrawn*. The following new and/or reiterated grounds of rejection are set forth:

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-11 and 17-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

4. Independent claims 1 and 5 positively recite in part “means for generating an acoustic emission signal from a body by contacting skin on one area of the body with skin on another area of the body to produce skin/skin frictional forces... wherein the acoustic emission signal is emitted when skin on one area of the body slides or rubs skin on another are of the body without motorized support”.

5. The claimed invention requires a proper interpretation of the claims under 35 U.S.C. 112 6th paragraph. The means-plus-function limitation above interpreted consistent with the instant specification (see page 10 paragraphs 1 and 2) comprises at least the following:

a. “The inventive method uses *acoustic signals emitted generated from contact with a substrate, preferably skin, when the skin on one area of the human*

body slides on the skin on another area of the body, i.e., skin on skin. The frictional forces in the skin/skin contact generate vibration patterns that are sensed by probe(s) 12 placed near the skin/skin contact area and recorded by result storage, manipulation, and output system 18... Acoustic emission is recorded during the gentle rub of the hand or finger on another skin part. It is typically detected on the forearm, the hand or the face, but could also be used for other body parts."

6. The scope of the claimed invention positively recites naturally occurring phenomenon as structural limitations comprising portions of a human body (i.e. at least "skin on one area of the body", "skin on another area of the body", and "skin/skin frictional forces"). Claiming portions of the human body, including for example the skin of a hand, a finger, or a forearm, as structural limitations comprises non-statutory subject matter.

Claim Rejections - 35 USC § 102

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3-6, 8-11, and 17-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, specifically Flament et al. ("Finger perception metrology. Correlation between friction force and acoustic emission"), hereinafter Flament.

9. For claims 1, 3-6, 8-11, and 17-20, Flament discloses a tactile acoustic emission measurement and analysis apparatus (Flament, pages 168-169), comprising *inter alia*:

- means of generating an acoustic emission signal from a body (Flament, pages 168-169)
- means for collecting, storing, and displaying said emission signal (Flament, pages 168-169); and
- means for correlating said emission signal with an attribute of skin of frictional forces comprising a means for evaluating current appearance of skin attributes (Flament, pages 168-169),
- wherein said apparatus is used as a clinical evaluation tool of skin attributes (Flament, pages 168-169),
- wherein said apparatus is intended to be used by consumers or clinicians (e.g. a beautician or professional advisor, Flament, pages 168-169) to study/evaluate the impact the effect of the application cosmetic compositions that affect skin attributes, including: hydration, texture, roughness, porosity, wrinkles, and pathologies of cutaneous tissue (psoriasis, eczema, dry skin, etc...) (Flament, pages 168-169),
- wherein said system comprises a medium for indicia of at least said two said skin attributes (i.e. test results) that allows said clinician to distinguish the effect of said application of cosmetic composition (Flament et al, pages 168-169),
- wherein the system is capable of being placed alongside a container holding said cosmetic composition and facilitating cosmetic composition selection based on the determined skin attributes,

- wherein said system is used in air (Flament et al, pages 168-169).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flament in view of Fleming (Non-Patent Literature submission: Abstracts of a presentation at a skin conference in Hamburg, 2003, Fleming “Mobile, multimedia computing for improved clinicopathologic correlation in dermatopathology”).

12. Flament discloses the claimed invention, as set forth and cited above, except for expressly disclosing a means for digitally displaying test result signals via the internet and/or handheld software. Fleming teaches a means for digitally displaying test result signals via the internet and/or handheld software (Fleming, pages 170-171). All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. All of the component parts are known in Flament and Fleming. The only difference is the combination of the component parts into a single device. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the components as taught

by Flament with the components as taught by Fleming to achieve the predictable results of providing an alternate means to display diagnostic data.

Response to Arguments

13. Applicant's arguments with respect to claims 1-11 and 17-20 have been considered but are moot in view of the new ground(s) of rejection, wherein the new ground(s) of rejection relies upon additional, newly presented claim limitations and/or a new interpretation of the claims with respect to previously applied prior art.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571)272-7232. The examiner can normally be reached on Monday through Friday 8am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jeffrey G Hoekstra/
Examiner, Art Unit 3736

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736